

NO: FST-CV10-6007676S

LA CASSE, THOMAS : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
AURORA LOAN SERVICES, LLC, ET AL : SEPTEMBER, 17, 2012

BEFORE THE HONORABLE ROBERT GENAURIO, JUDGE

A P P E A R A N C E S:

Representing the Plaintiff:

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Representing the Defendants:

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1 THE COURT: Okay, that would be number 93,
2 La Casse versus Aurora.

3 ATTY. LEE: Yes, Your Honor.

4 THE COURT: Motion for summary judgment. Give
5 me one minute, please.

6 If counsel would identify themselves for the
7 record, please.

8 ATTY. BROWN: Attorney Donald Brown for Mr.

9 La Casse.

10 ATTY. LEE: Attorney Mike Lee for the
11 Defendants, Aurora Loan Services and MERS. This is
12 our motion.

13 THE COURT: All right. You may proceed.

14 ATTY. LEE: Yes, Your Honor, this matter stems
15 from a foreclosure which occurred in Massachusetts
16 involving Mr. La Casse and a property of his. The
17 Plaintiff makes numerous allegations in their
18 complaint. However, most of them center around the
19 claims that the foreclosure -- the underlying
20 foreclosure in Massachusetts was somehow improper.

21 We hold that it was not improper and that there
22 are no genuine issues of fact involving the matter
23 and have set forth so in our papers, which include an
24 affidavit from a representative of Aurora Loan
25 Services who was the authorized servicer at the time
26 of the foreclosure.

27 Pursuant to Massachusetts law, which is a non-

1 Judicial foreclosure state, Aurora Loan Services did
2 meet all the requirements, which included, and these
3 are all within our papers, a notice of publication
4 requirement, as well as being holder of the mortgage
5 as servicer at the time.

6 THE COURT: Let's back up for a minute.

7 ATTY. LEE: Certainly.

8 THE COURT: What's the nature of the action?

9 ATTY. BROWN: Your Honor, the nature of the
10 action in this case is that, in a nutshell, Aurora
11 improperly, on their own initiative, foreclosed the
12 property of my clients in Longmeadow, Massachusetts.

13 I took this case over from Attorney Nakian a few
14 months ago when he was discharged by the La Casses on
15 several other matters. I have reviewed this briefly,
16 and actually, in doing so, and in receiving counsel's
17 motion for summary judgment and having to -- having
18 started to overturn some of the stones in this case,
19 it appears that this complaint is actually going to
20 have to be amended to include fraud and possibly 93A
21 claims under Massachusetts State law.

22 THE COURT: Well, let me ask -- here's what I'm
23 a little confused about --

24 ATTY. BROWN: And the other --

25 THE COURT: -- and maybe --

26 ATTY. BROWN: And just so you know how we got
27 here. This -- this complaint was originally filed

1 and the Massachusetts -- there was a summary process,
2 essentially the Massachusetts analogue to a summary
3 process case, filed by the Plaintiff in
4 Massachusetts, after having reviewed some of the
5 information that was provided.

6 The Massachusetts Court deferred to this Court
7 until this matter is concluded. And counsel had
8 raised an objection prior to the appropriateness of
9 this action in Connecticut; and Judge Mintz had ruled
10 that it was beyond the time period to make such
11 objections and that the Court would entertain this.

12 The plaintiff -- or the -- or excuse me, I'm
13 sorry. I'm used to being on the other side, so I
14 apologize. The --

15 THE COURT: Well, here -- and I understand the
16 motion to dismiss --

17 ATTY. BROWN: Yeah.

18 THE COURT: -- was denied as a --

19 ATTY. BROWN: It was.

20 THE COURT: -- result of timeframe issues.

21 ATTY. BROWN: Yeah.

22 THE COURT: I'm just -- educate me, why --

23 ATTY. BROWN: My clients --

24 THE COURT: -- would there be an action in
25 Connecticut to --

26 ATTY. BROWN: Because at the time, my clients --

27 THE COURT: -- set -- effectively set aside a

1 Massachusetts foreclosure?

2 ATTY. BROWN: Because my clients have several
3 cases. And specifically, this isn't necessarily to
4 set aside a foreclosure. This is, essentially, I
5 think, in all fairness, the original complaint was
6 poorly drafted. But, it does allege predatory
7 lending, breach of contract, you know, fraud --

8 THE COURT: So you're saying this is an action
9 for --

10 ATTY. BROWN: -- unfair debt collection.

11 THE COURT: -- money damages for --

12 ATTY. BROWN: Yes, Your Honor, this is --

13 THE COURT: -- a variety of torts.

14 ATTY. BROWN: -- an action for money -- we
15 haven't -- we haven't brought a declaratory judgment
16 action, if that's what you're getting at.

17 THE COURT: All right. And -- and --

18 ATTY. BROWN: -- to attack the judgment.

19 THE COURT: That helps me.

20 ATTY. BROWN: Okay.

21 THE COURT: This is essentially an action that
22 sounds in tort for damages --

23 ATTY. BROWN: Right.

24 THE COURT: -- as a result of conduct of --

25 ATTY. BROWN: But, in response to what counsel
26 was saying, before Your Honor started inquiring, my
27 concern in this case, is that we have an expert on

1 retainer in a foreclosure defense matter for a
2 Connecticut property.

3 And after discussing with the expert, the nature
4 of this -- the documents that are all public records,
5 for the most part, that are attached to my objection;
6 we've determined that the actual owner of the loan is
7 this Lehman Brothers Trust. It's not Aurora, at
8 least that's our assertion.

9 Moreover, we've also discovered that documents
10 were submitted to this Court attached to counsel's
11 motion for summary judgment, specifically the note,
12 which are, as I raise in my objection, are vastly
13 different than the documents that were submitted with
14 the proof of claim under Rule 11 to the Massachusetts
15 Bankruptcy Court at Springfield.

16 I realize that this is a giant, you know, both
17 of us have filed, for lack of a better way to put it,
18 enormous documentary exhibits. However -- but if,
19 there's no objection, you know, I can just cut to the
20 chase and --

21 ATTY. LEE: Now, Defendant's argument is that
22 the status of the notes pursuant to Massachusetts
23 law, are basically irrelevant. Massachusetts law,
24 prior to a recent decision by their Supreme Court,
25 required that the foreclosing party, using the power
26 of sale under a non-Judicial foreclosure, needed to
27 show that they were assigned the -- the assignee of

1 the mortgage, i.e. mortgage holder.

2 That did not require them to be the owner of the
3 underlying obligation; but merely to have the
4 authority to actually have the sale in Massachusetts
5 versus commence an action which you would do in
6 Connecticut.

7 They -- to my knowledge, Plaintiffs have not
8 made any -- have not asserted that they were not
9 servicer. They did not have permission to act as
10 servicer, which would permit them to do so.

11 Additionally, an assignment of mortgage was recorded
12 with the Hampton County Register of Deeds, prior to
13 the sale. That's what would be required under a very
14 famous case, Habanez.

15 Later, a recent decision, Eaton, Supreme Court,
16 again, Massachusetts, clarified what was required in
17 terms of the note. Their decision was prospective.
18 It did say that the parties had to be, either, holder
19 of the note, which we do argue that we were, although
20 they're -- we will acknowledge, that there was some
21 issues with the Exhibits showing the note.

22 Or, that they had permission from the holder of
23 the note. That would mean that they were servicer,
24 thus, even under a more recent case, they would have
25 had permission to foreclose. But, under the prior
26 case law, they still have permission to foreclose as
27 being the assignee of the mortgage.

1 The irregular --

2 THE COURT: Is it possible that the Defendant
3 had the right to foreclose, but still has committed
4 tortious conduct?

5 ATTY. LEE: We don't believe so.

6 ATTY. BROWN: Your Honor, I -- I -- to be honest
7 with you --

8 THE COURT: I asked him, let me see --

9 ATTY. BROWN: In honest deference to your
10 question --

11 THE COURT: But I asked him the question.

12 ATTY. BROWN: Oh, I'm sorry, Your Honor. I --

13 THE COURT: So let him answer --

14 ATTY. BROWN: I apologize. I thought you asked
15 me the question.

16 THE COURT: No.

17 ATTY. LEE: My understanding is that Mr. La
18 Casse defaulted at some point, I believe, let me just
19 check my notes, in 2009. He raised no objection to
20 that as required. In Massachusetts, he would be
21 required to actually file a lawsuit against Aurora.

22 So, he did not contest to that. We did have
23 some notice to admit where they didn't answer our
24 notice to admit; which is an admission that included
25 the note and the mortgage, that he signed them.

26 THE COURT: So, you're saying that in
27 Massachusetts, the essential procedure for

1 foreclosure is the holder of the mortgage gives some
2 sort of notice to --

3 ATTY. LEE: Correct.

4 THE COURT: -- to the holder of the equity. And
5 once they've given that notice, they can proceed to
6 sell, unless the owner of the equity brings an action
7 to stop it.

8 ATTY. LEE: Correct, and the notice requires an
9 actual mailing of a notice by certified mail. We've
10 included those in our Exhibit, as well as
11 publication, which requires publication of that sale,
12 three consecutive weeks, I believe twenty days,
13 before the actual sale occurs.

14 And those all -- we provided all of that with
15 our Exhibits.

16 THE COURT: But, my question is, can the
17 foreclosing party in Massachusetts have done that?
18 Have complied with all of the, for lack of a better
19 word, I'll say technical requirements of a
20 foreclosure; yet still have committed tortious
21 conduct for which it may be liable to the Plaintiff?

22 ATTY. LEE: Based on the material and the
23 evidence that I have reviewed, I don't see any
24 tortious conduct. I don't see that they have raised
25 it in their complaint, that there was specific
26 conduct.

27 Most of their complaint involves MERS, and

1 assignments, and vague references to some other
2 statutes. But, there is nothing of specificity that
3 indicates that -- I'm personally not even clear what
4 that tortious conduct would be, other than the
5 improper foreclosure of the -- the underlying
6 foreclosure.

7 And that appears to the -- the bulk of both the
8 -- the objection to our motion, as well as the
9 initial complaint. I haven't seen a change there in
10 terms of raising --

11 THE COURT: Well --

12 ATTY. LEE: -- a particular --

13 THE COURT: -- let's hear -- let me hear from
14 Attorney Brown?

15 ATTY. LEE: Sure.

16 THE COURT: If you want to address that issue
17 plus other issues?

18 ATTY. BROWN: I'll address that issue in one
19 moment, Your Honor. I just want to reflect with
20 counsel.

21 Your Honor, can I approach?

22 THE COURT: You may.

23 ATTY. BROWN: Part of the crux of the original
24 complaint was that this matter involved a significant
25 amount of fraud. I'm just going to get it straight.
26 This here is from the Bankruptcy Court.

27 THE COURT: Yes.

1 ATTY. BROWN: My clients were in Chapter 11,
2 technically still are.

3 THE COURT: During the foreclosure?

4 ATTY. BROWN: Uh, yeah, I believe they filed and
5 then they were out, and then they went back in and
6 they've been discharged, but the bankruptcy is still
7 open.

8 This was filed in the Massachusetts Bankruptcy.
9 Allegedly is original note. And this is the one that
10 was attached to counsel's papers, which I just
11 discussed. And as you can see, there is an alonge.
12 There's a very different endorsement on this. And
13 then --

14 THE COURT: Are these documents a part of your
15 objection?

16 ATTY. BROWN: Yes, Your Honor, they were
17 attached as Exhibits.

18 THE COURT: Oh, then --

19 ATTY. BROWN: Okay, I -- I apologize, it's just
20 that I left my 576 page filing at home this morning,
21 so I --

22 THE COURT: Yes.

23 ATTY. BROWN: -- had to do the microprint
24 version.

25 THE COURT: Okay.

26 ATTY. BROWN: Essentially, we believe that there
27 is a considerable amount of tortious conduct here.

1 The problem is, is that the evidence required to
2 establish this, is not exactly part and parcel, easy
3 to come by. If I hadn't had the, you know,
4 opportunity to be familiar with bankruptcy and review
5 pacer, and discuss this matter -- and my clients also
6 have an expert on retainer, that we haven't decided
7 what, you know, if any her role will be in this case.

8 However, as I indicated in my objection, there
9 are -- Massachusetts, unlike Connecticut, requires
10 that, in order to foreclose a mortgage, the procedure
11 that is followed is, essentially, an order to show
12 cause with a military affidavit is basically filed
13 with the appropriate Land Court.

14 Your opportunity to actually defend an action in
15 Massachusetts is through the bringing of an action.
16 Very similar to what we discussed before, a
17 declaratory judgment to establish that it's not
18 actually correct.

19 In this particular case, my clients chose to
20 pursue bankruptcy at that time, from a financial
21 reality point of view. They own several properties,
22 in several states. And on and off were residents of
23 the State of Connecticut.

24 And the long and short of it is, we've basically
25 -- and I would say, in the last, maybe, since like,
26 the end of August, discovered that there appears to
27 be some, perhaps, inappropriate alteration of

1 instruments by various parties.

2 Now, mind you, all these documents are submitted
3 under oath, under penalty of perjury by counsel. I
4 find it very disturbing that there, you know, that
5 there's no explanation for any of this offered, you
6 know, a legitimate explanation, as to why you'd be in
7 possession of bearer paper, that's now not bearer
8 paper contemporaneous to these matters being dealt
9 with.

10 And quite frankly, we've also discovered that
11 this was a securitized asset. Aurora was not the
12 owner of this loan. In order to be a securitized
13 asset, it would have had to have been put in the
14 trust by a cutoff date; which is what's referred to
15 in my objection.

16 Therefore, we are pursuing an amendment to this
17 complaint, that will be filed shortly, alleging a 93A
18 claim under Massachusetts law. Which is essentially,
19 an equivalent of our CUTPA, but a little bit -- has a
20 little more teeth to it.

21 And, you know, we may very well, based upon
22 further discovery to be conducted. I mean, I'm going
23 to have to depose, probably, a CFO or a document
24 custodian. It's been my experience that the banks
25 generally produce witnesses that are not really
26 officers of the company.

27 So, I intend to pursue this matter fully. And,

1 you know, you know, there's just a -- a reality
2 involving a time factor. I mean, it's -- there's
3 just me and, you know --

4 THE COURT: Okay.

5 ATTY. BROWN: I'm not -- you know, I mean, my
6 point is, I don't think this is appropriate for
7 summary judgment at this point, given the fact that
8 fraud has been pled, predatory lending has been pled
9 --

10 THE COURT: Yes, but -- but you have to do more
11 than plead it. You've got to --

12 ATTY. BROWN: Well, and I don't -- I understand
13 that. But now we have, in possession, alter
14 instruments that are a record in two Courts.

15 ATTY. LEE: We -- we address in a footnote what
16 most likely happened in terms of that particular
17 Exhibit. And that is an older copy was used. They
18 make imaging of these documents throughout their
19 lifespan.

20 In this case, most likely, an erroneous copy was
21 made. The one that was in the Bankruptcy Court does
22 appear to jibe. I would have to take a look again at
23 it.

24 However, the argument that we make in our -- our
25 motion, and what I'm still missing, is that the --
26 the state of that note, actually would not play any
27 fact -- I mean, in other words, it may be there -- if

1 ATTY. BROWN: Yes. So, my point is --

2 THE COURT: And your claim is the motion for
3 relief from stay was supported by documents --

4 ATTY. BROWN: That's where those documents came
5 from, Your Honor.

6 THE COURT: -- were inappropriate. And therein
7 lies the tortious conduct.

8 ATTY. BROWN: Yes. So, my point is, in a
9 nutshell --

10 ATTY. LEE: But, mine would be that they didn't
11 lie --

12 THE COURT: You're saying it's not material --

13 ATTY. LEE: They did not lie.

14 THE COURT: -- because even if they had provided
15 the right documents --

16 ATTY. LEE: Well, I'm not suggesting they are
17 the wrong documents. I don't -- I can't speak to the
18 Bankruptcy case.

19 THE COURT: Okay.

20 ATTY. LEE: But I can speak to the condition of
21 the -- of the foreclosure. And my understanding, and
22 we say in our moving papers --

23 THE COURT: Well, the foreclosure couldn't have
24 proceeded without the relief from stay.

25 ATTY. LEE: No, correct, and that that relief
26 from stay would be based on the same principles that
27 were used in the foreclosure in terms of the sale.

1 ATTY. BROWN: The problem we have is that the
2 foreclosure in this particular matter was far in the
3 past, okay. My clients were financially damaged by
4 this conduct --

5 THE COURT: When was the foreclosure?

6 ATTY. BROWN: Um --

7 ATTY. LEE: The sale --

8 ATTY. BROWN: It was -- well, the --

9 ATTY. LEE: 2010, I believe the sale was.

10 ATTY. BROWN: Yeah, it was November -- well,
11 actually, let me rephrase that. November -- the
12 actual order to show cause was November 15th, the
13 complaint to foreclose mortgage with the soldiers and
14 sailors affidavit.

15 THE COURT: November 15, 2010.

16 ATTY. BROWN: Yes, so my point is, is that
17 counsel is trying to somehow claim that because my
18 client may have owed someone money, who, quite
19 frankly, at this point in time, based on these
20 documents, it's -- it's questionable who that really
21 is.

22 That at some point in time, they owed somebody
23 money. Well, there's, you know, nobody -- you know -
24 -

25 THE COURT: Which debt was secured by a
26 mortgage.

27 ATTY. BROWN: Exactly, and that mortgage, based

1 on what our expert is telling us, and based upon the
2 -- the alonge that happened to be attached to one of
3 those documents, is a pooled asset. We've used
4 Bloomberg to determine that it's being tracked as an
5 REO by US Bank, who is also a sub-servicer of some
6 sort here; as an asset of this trust.

7 It was an asset in January of -- January 1, 2007
8 was the cutoff date for this trust. So, it had to
9 have been placed before that date. This is later
10 brought in name of a servicer, not in the name of a
11 trust, as is commonly seen now in Courts to these --
12 to avoid these exact scenarios.

13 I --

14 ATTY. LEE: That itself is not improper under
15 Massachusetts law.

16 ATTY. BROWN: Well, I -- I believe its deceptive
17 conduct --

18 ATTY. LEE: Well, but, I mean that --

19 ATTY. BROWN: That's been pled here, originally.

20 ATTY. LEE: You -- you -- we -- you --

21 THE COURT: All right.

22 ATTY. LEE: We have a letter that indicated
23 there was a change in servicer that was sent --

24 ATTY. BROWN: I mean, the problem we have here -

25 -

26 ATTY. LEE: -- in 2008 to Mr. La Casse.

27 THE COURT: One -- one at a time, please.

1 ATTY. BROWN: We have to rely --

2 THE COURT: Attorney Brown --

3 ATTY. BROWN: -- on the Court record, Your
4 Honor. I mean --

5 ATTY. LEE: This is --

6 ATTY. BROWN: -- Federal Rule of civil procedure
7 is crystal clear. If you submit it to the Bankruptcy
8 Court, it must be true. That's under penalty of
9 perjury. It's the same thing when counsel submits
10 documents here.

11 There better be a legitimate explanation from an
12 officer entitled to sign these documents as to how we
13 have multiple copies of endorsements floating around.
14 The -- the only holder of this note was a trust.
15 Unless he has other documentation to so that that
16 there's a legitimate chain of title that went from an
17 originator to a trust and back to Aurora to
18 accomplish their goals.

19 So, there's definitely tortious conduct in this
20 case. And it's definitely actionable under
21 Massachusetts law.

22 THE COURT: All right.

23 ATTY. LEE: And we would respectfully disagree
24 that that's the case. They -- the notion that
25 different copies of the note -- this is -- they're
26 not conflicting. They're -- they're temporally
27 different. Some were made images at certain times.

1 ATTY. BROWN: The endorsements --

2 ATTY. LEE: That's what they're saying.

3 ATTY. BROWN: -- are different.

4 ATTY. LEE: There's nothing that looks --

5 there's no endorsement that's disappearing in terms
6 of --

7 ATTY. BROWN: That's not -- it's been expounded
8 upon.

9 ATTY. LEE: But again, we would again come back
10 to the fact that Mr. La Casse was made aware, it's
11 within our Exhibits, I think its Exhibit C, that
12 there was a notice of an assignment that was sent to
13 him indicating that Aurora was now the servicer.

14 So, he did know who Aurora was. He was fully
15 aware of it. We only mention -- I only mention the
16 notion that he owed money, didn't pay it, in a sense
17 that that was the precipitating set of facts which
18 led to the foreclosure in Massachusetts.

19 Was that he signed a note and mortgage, which he
20 doesn't deny. That he defaulted on those
21 obligations. And the foreclosure ensued.

22 ATTY. BROWN: That's irrelevant, Your Honor.

23 This is an action --

24 ATTY. LEE: I'm just addressing an issue of
25 tortious --

26 ATTY. BROWN: I'm just saying, this is -- that's
27 not a defense to a tort.

1 THE COURT: I think I have a -- I don't want to
2 say I have a good handle yet --

3 ATTY. BROWN: Yeah.

4 THE COURT: But I think I have an understanding
5 as to the scope of the issues. I'll look over the
6 documents that each of you have filed.

7 ATTY. BROWN: Thanks.

8 ATTY. LEE: I appreciate that.

9 THE COURT: I'll take the papers on the matter
10 and I'll issue a decision.

11 ATTY. BROWN: Thank you, Your Honor.

12 ATTY. LEE: Thank you, Your Honor,

13 THE COURT: Thank you very much.

14 XXXXXX

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16

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NO: FST-CV10-6007676S

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C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Robert Genuario, Judge, on the 17th day of September, 2012.

Dated this 28th day of September, 2012, in Stamford, Connecticut.


Lisa Franchina
Court Recording Monitor